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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL JOSE SEPULVEDA,

Defendant and Appellant.

D052581

(Super. Ct. No. JCF15785)

APPEAL from a judgment of the Superior Court of Imperial County, Matias R. Contreras, Judge. Affirmed.

I.

INTRODUCTION

A jury found Miguel Jose Sepulveda guilty of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)).¹ The jury also found true that Sepulveda had personally inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)). After Sepulveda

¹ Unless otherwise specified, all subsequent statutory references are to the Penal Code.

waived his right to a jury trial, the trial court found that Sepulveda had previously suffered a strike conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), and a serious felony conviction (§ 667, subd. (a)(1)), stemming from a single robbery conviction in *People v. Sepulveda* (Super. Ct. San Diego County, 2001, No. SCD161874) (SCD161874). The trial court sentenced Sepulveda to 16 years in prison, including eight years for the underlying offense, comprised of the upper term of four years, doubled, due to the strike prior, three years for the great bodily injury enhancement, and five years for the serious felony prior.

On appeal, Sepulveda claims that there is insufficient evidence in the record to support the trial court's finding that he is the individual who suffered the 2001 robbery conviction in SCD161874. We affirm the judgment.

II.

FACTUAL AND PROCEDURAL BACKGROUND

In May 2005, Sepulveda stabbed victim Antonio Sandoval in the neck with a knife.

On June 1, 2005, the People filed a felony complaint charging "MIGUEL JOSE SEPULVEDA" with attempted murder (§§ 664, 187) (count 1). That same day, Sepulveda was arraigned on the complaint. The arraignment minute order lists Sepulveda's birth date as July 27, 1983.

In November 2007, the People filed a second amended information, charging "MIGUEL JOSE SEPULVEDA" with attempted murder (§§ 664, 187) (count 1), and assault with a deadly weapon (§ 245, subd. (a)(1)) (count 2). With respect to both counts,

the People alleged that Sepulveda personally inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)) and that Sepulveda had previously suffered a strike conviction (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), and a serious felony conviction (§ 667, subd. (a)(1)), stemming from a single robbery conviction in SCD161874.

In December 2007, a jury found Sepulveda not guilty of attempted murder (§ 664, 187) as alleged in count 1 of the second amended information. The jury found Sepulveda guilty of assault with a deadly weapon (§ 245, subd. (a)(1)), as charged in count 2. Also with respect to count 2, the jury found that Sepulveda personally inflicted great bodily injury upon the victim (§ 12022.7, subd. (a)).

After the jury returned its verdicts, the trial court held a court trial on the prior conviction allegations contained in the second amended information. The People offered in evidence various documents from SCD161874, including a felony complaint dated August 7, 2001, a guilty plea form filed on August 22, 2001, a September 19, 2001 probation officer's report, a September 24, 2001 minute order granting probation, a September 24, 2001 formal order granting probation, and several postconviction probation records. Among the defendants listed in the felony complaint is "MIGUEL SEPULVEDA," "*aka MIGUEL JOSE SEPULVEDA.*" The August 7, 2001 complaint lists this defendant's birth date as July 27, 1983 and charges him with various crimes, including robbery (§ 211) (count 1). The guilty plea form records the defendant's plea of guilty to the robbery charged in count 1 of the complaint. The September 19, 2001 probation report lists the defendant's name as "SEPULVEDA, MIGUEL," with a birth date of July 27, 1983. The report lists defendant's race as "His/Lat/Mex," his sex as

"MALE," his height as "6'," his weight as "140," his eyes as "BROWN," and his hair as "BLACK."

Defense counsel in the present case objected to the admission of each of the documents on various grounds, including that they lacked foundation, were inadequately authenticated, constituted hearsay, and violated Sepulveda's constitutional right to confront adverse witnesses. In addition to these objections, with respect to the probation reports, defense counsel raised a relevancy objection.

Defense counsel argued that the People had failed to provide sufficient evidence that Sepulveda was the same individual who suffered the conviction in SCD161874. In particular, defense counsel noted that the record did not contain booking photographs or fingerprints establishing Sepulveda's identity as the individual who suffered the prior conviction.

The court asked the prosecutor how the court was to determine whether Sepulveda was the individual named in the documents pertaining to SCD161874. The prosecutor responded that the People had offered probation reports in SCD161874 that contained a description of the defendant in that case, and that the description matched the description of Sepulveda in this case.

The court proceeded to find that Sepulveda had suffered a prior robbery conviction in SCD161874 as alleged in the second amended information. The court reasoned:

"The general description given by the probation department seems to fit Mr. Sepulveda's description. [¶] Well, I'm going to find that that's sufficient, and I'm satisfied that . . . Mr. Sepulveda is the individual named in the exhibit that has been provided to the court by the prosecution. [¶] . . . I'm satisfied . . . from the documents

having been certified by the San Diego Superior Court that Mr. Sepulveda has been convicted of Penal Code section 211, robbery on September 24, 2001, in . . . SCD161874. [¶] I'm going to find that he has, in fact, as the information alleges, been convicted of this prior conviction, and would make that finding at this time."

After making this finding, the court impliedly overruled defense counsel's evidentiary objections, stating to defense counsel, "I think you made a clear record of those objections. However, as I've indicated, I do find that he [Sepulveda] is the individual named in the exhibit [regarding the prior conviction]."

At Sepulveda's sentencing hearing, the trial court sentenced Sepulveda to 16 years in prison, as described in part I., *ante*.

Sepulveda timely appeals.

III.

DISCUSSION

There is substantial evidence to support the trial court's finding that Sepulveda is the person who suffered the conviction in SCD161874

Sepulveda claims that there is insufficient evidence to support the trial court's finding that he suffered a prior conviction in SCD161874. Specifically, Sepulveda claims that the record contains insufficient evidence that he is the person who suffered the conviction in SCD161874.

A. *Standard of review*

We review challenges to the sufficiency of the evidence to support prior conviction findings under the same standard that applies to sufficiency challenges to criminal convictions generally. (*People v. Delgado* (2008) 43 Cal.4th 1059, 1067.) This

court must review the entire record in the light most favorable to the judgment to determine whether there is substantial evidence to support the trial court's finding that Sepulveda suffered a prior conviction in SCD161874. (See *People v. Johnson* (1980) 26 Cal.3d 557, 576-578.) To be substantial, the evidence must be " 'of ponderable legal significance . . . reasonable in nature, credible and of solid value.' [Citation.]" (*Id.* at p. 576.)

B. *The record contains substantial evidence to support the trial court's finding that Sepulveda suffered a prior conviction in SCD161874*

1. *Governing law*

In *People v. Mendoza* (1986) 183 Cal.App.3d 390, 400 (*Mendoza*) the defendant, who was tried and convicted under the name Arthur *Flores* Mendoza, claimed that the record contained insufficient evidence to support various prior conviction findings because the records of such convictions referred to "Arthur *Contreros* Mendoza" and "Arthur *Lawrence* Mendoza, aka Arthur Mendoza, aka Arthur *Contrerras* Mendoza." The *Mendoza* court rejected this argument, noting that "it has been repeatedly held that the insertion, omission of, or mistake in the middle name, or initial in a criminal or civil proceeding is . . . immaterial." (*Id.* at p. 401.) The *Mendoza* court further noted that "[i]t has long also been the rule in California, in the absence of countervailing evidence, that *identity of person may be presumed, or inferred, from identity of name,*" and that no countervailing evidence had been presented in that case. (Accord *People v. Mason* (1969) 269 Cal.App.2d 311, 314 (*Mason*) ["California cases hold that, in the absence of other and contrary testimony, [fn. omitted] the identity of names, coupled with proper

proof of prior convictions, is sufficient to sustain a finding that defendant was the person involved in the earlier cases."].)

Evidence that the defendant has the same birth date as that of the defendant contained in a record detailing a prior conviction is relevant to establish the defendant's identity as the individual who suffered the prior conviction. (*People v. Towers* (2007) 150 Cal.App.4th 1273, 1286.)

2. *Evidence that Sepulveda shared the same name and birth date as the defendant in SCD161874 is sufficient to support the trial court's prior conviction finding*

The record in this case contains evidence that the individual who suffered the prior conviction in SCD161874 shared the same name and birth date as Sepulveda. (See pt. II, *ante*.) Sepulveda presented no countervailing evidence. In light of the case law cited above, we conclude that the record contains sufficient evidence to support the court's finding that Sepulveda suffered a prior conviction in SCD161874.

Sepulveda acknowledges that proof of identity of names between the defendant and the individual named in records detailing a prior conviction is sufficient to sustain a prior conviction finding. (Citing *Mason, supra*, 269 Cal.App. at p. 314.) However, he notes that "in many cases, matching fingerprints, photographs, and other identifying characteristics have been found to qualify as sufficient." It is undoubtedly better practice in proving a prior conviction allegation for the People to present such additional evidence as to a defendant's identity. (See, e.g., *People v. Sarnblad* (1972) 26 Cal.App.3d 801, 806 ["photographic or fingerprint evidence may be utilized to prove priors"].) Nevertheless, the evidence that the People presented in this case is legally sufficient

under existing California law to support the trial court's finding that Sepulveda suffered a prior conviction in SCD161874.

IV.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

HALLER, Acting P. J.

McINTYRE, J.